

# The Transformation of the Ombudsman System in Democratizing Indonesia (Chances and challenges in advancing the public services of the local government)

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## Abstract

The government of Indonesia has undergone several reforms since 1998. One of these was to establish autonomy in its local government. With local autonomy, the local government was expected to provide public services and improve the quality of social welfare. However, facts show otherwise. Granting broad authority to local governments instead allowed many government officials in the region to commit maladministration in regard to public service delivery. That is why they introduced the Ombudsman system for supervising public services. This article discusses the chances and challenges of the Ombudsman system in improving the public services of a local government. The chances of the Ombudsman system could be found from the status of the institution, the establishment of National Ombudsman branches within a region, improving authorities, and support from other regulations. The challenges faced by the Ombudsman system could be found within the Ombudsman itself and include issues with regulation, public acceptance, and government officials.

## Keyword

Maladministration, Ombudsman System, Local Government

## インドネシアの民主化におけるオンブズマン制度の変容 (地方自治体の公共サービスを進める上での好機と課題)

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## 要旨

インドネシア政府は1998年以降、多くの改革を行ってきた。そのような改革の1つは自治体に自治を確立することである。その自治の権限に基づき、地方自治体は公共サービスを提供し、社会福祉の質を改善することが期待されていた。しかし、実際はそうならなかった。地方自治体に幅広い権限を付与することで、かえって、地域の多くの政府職員が不当な行政サービスを提供することを許してしまった。このような理由から、公共サービス監督のためにオンブズマン制度を導入する必要があると考えられたのである。本稿では、地方政府の公共サービスの改善におけ

るオンブズマン制度の可能性と課題について検討する。オンブズマンが政府の機関として確立され、また他の法によってもオンブズマンの権威が高められたことは好機である一方、全国と地方のオンブズマン制度の違い、様々な規制による活動の制限、国民や政府関係者の間で制度が十分受け入れられていないことが課題である。

#### キーワード

行政過誤, オンブズマン制度, 地方政府

### A. Introduction

Establishing good public services is an important part in realizing bureaucratic reform in Indonesia. One reform happened in 1998, and it started to change the character of bureaucracy and the public service delivery. In the constitution of 1945, the right of public service is provided in Article 34 (3). This provision provides that the state is responsible for providing public service facilities properly.<sup>1)</sup> Therefore, denial of delivering public service to the people should be unconstitutional.

The implementation of local autonomy system is also an important policy taken by the government after 1998 reform.<sup>2)</sup> One of main purposes of this policy is to advance the public service quality. Moreover, to realize the purpose, the Local Government Act provides a broad authority for a local government to organize public service delivery. Through the process of decentralization, most of government affairs are transferred to the local governments.<sup>3)</sup> Then, by this authority, the local governments have to serve the people optimally in accordance with their respective needs of the regions.

The public service by the public officials is an embodiment of the function of state apparatus as a servant of the community.<sup>4)</sup> It is an obligation for the government to establish good public system with the idea of the rule of law.

However, it has been difficult to do so. Many of local governments have failed to provide public service to the people properly. Such failure has been thought to be occurred due to bureau-pathology. Bureau-pathology is a term used in the study of public administration, and it means various diseases that infect on the bureaucratic body and cause malfunction in the bureaucratic system.<sup>5)</sup>

There are many forms of bureau-pathology (hereinafter referred to maladministration), i.e. protraction of business, abuse of authority, failure of providing, deviation from formal proceedings, demands for money, discrimination, taking sides, and conflict of interest.<sup>6)</sup> According to annual report of National Ombudsman, local government always ranks first in many cases of maladministration reported by the public. In 2014, the number of incoming complaint was 6,678, and 43.7% of the complaints were complaints against local government. In 2015, in total 6,859 complaints, there were 41.59% or 2,853 complaints filed to local governments, and in 2016 there was 9,030 complaints, and 40 % or 3,612 complaints addressed to the local governments.<sup>7)</sup>

The fact that lots of maladministration occurred in a local region indicates weakness in implementing local autonomy and its supervisory system. The local autonomy system has not been improving the quality of public service as

expected. And the supervisory system held by government and non-government organization has not been working well, either.

The introduction of an Ombudsman system in 2000 showed the desire of the people in Indonesia to promote the process of bureaucratic reform in Indonesia. The Ombudsman exists to ensure that the public service delivery should be free from maladministration. In the process of decentralization, not only the political power but also maladministration was transferred to many local regions. However, the Ombudsman has not been able to change the character of bureaucracy.

In many cases, Ombudsman still resolves maladministration on a case-by-case basis, whereas a problem of maladministration happens systemically. Sometimes, the Ombudsman takes too long to resolve a problem. The Ombudsman should not spend too much time to handle an individual case. It is important to establish a systemic approach to maladministration problem. And it is also important to understand what Ombudsman could do to democratize Indonesia. In this Article, I try to analyze the various chances and challenges of Ombudsman system in improving public services of local government.

## **B. The Establishment of Ombudsman System in Democratizing Indonesia**

### **1. Public Service and Democracy**

The people in Indonesia have not been satisfied with the quality of public service. And the reform of the governance is becoming a big issue. This is also growing along with the increasing legal awareness that the citizens, in the democratic life, have the rights to be served.<sup>8)</sup> A country normally needs bureaucratic

system in providing a quality of public service to have good governance. The country also needs bureaucratic system that adopts democratic values, including transparency and accountability to the people. Therefore, both bureaucracy and democracy are indispensable to good governance.

The success in the implementation of the democratic public service is when the state can put those values in the process of delivering public service. Government agencies must provide a quality public service to the community. Democratic public service means to respect the rights of individuals and groups, the laws and regulations, diversity and differences, as well as the rights for getting quality services for all citizens without discrimination. If the government respected those values, the people would not be harmed very much because of the poor business of the bureaucrats.

Currently, many countries, including Indonesia, claim that they are democratic countries, but they are not necessarily applying the values of democracy properly. After 1998 reform, Indonesia has also struggled to be a democratic country. Implementing local autonomy system, by transferring the power to local government, is one of the efforts to be a democratic country. Since many government affairs are carried out by local governments, a region is encouraged to realize the democracy through the public service delivery. In fact, they have not been able to improve democracy simply by granting the power to the regions.

To democratize Indonesia, maladministration is one of serious problems. Maladministration is any behavior or act against the law, beyond the authority, using authority for any purpose other than the purpose of the authority properly given. In the Ombudsman Investigation Guide Book

for Indonesia, maladministration is generally defined as an unfair behavior, including undue delay, impolite, careless, abuse of authority, unreasonable, unjust, oppressive, improper, and discriminative.<sup>9)</sup> Maladministration also happens when operators of a government service improperly perform their duty by negligence.<sup>10)</sup>

Establishment of Ombudsman system is an entry point in fighting against maladministration. As Ombudsmen do in various other countries, Indonesian Ombudsman has also a mission to realize the spirit of democracy, especially in public service delivery.

## **2. The Transformation of Ombudsman System in Indonesia**

Transforming the idea of Ombudsman system in Indonesia is important point to support bureaucratic reforms that have been started from 1998. The transformation was inspired by the condition that internal oversight carried out by the government has not been working optimally. So, they needed to develop an external oversight system that is independent and has an access to the bureaucratic system.

The effort to establish an Ombudsman system in Indonesia was initiated by Habibie, the third President of Indonesia, after 1998 reform. And this idea was continued by Abdurrahman Wahid. The government of Indonesia thought that Ombudsman system was so important to establish good governance. Right after inauguration, President Abdurrahman Wahid immediately issued the Presidential Decree No. 55 of 1999 on the Establishment of the Ombudsman Institution Assessment Team. According to this decree, the purpose of creating Ombudsman institution was to improve the legal protection of the rights of community members against abuse of power, and to give

opportunities to the disadvantaged members of society.

Then in March 20, 2000, Abdurrahman Wahid issued the Presidential Decree No. 44 of 2000 on the National Ombudsman Commission. National Ombudsman Commission was the initial Ombudsman system provided by the central government. National Ombudsman Commission was an independent institution even though it was a part of executive branch. As the first form of Ombudsman in Indonesia, the National Ombudsman Commission was authorized to do investigation about a complaint.<sup>11)</sup>

According to Presidential Decree No. 44 of 2000, the establishment of National Ombudsman Commission was effected by the three-following basic thoughts:

- a) Community empowerment through public oversight will further guarantee that the organization of the state should be honest, clean, transparent, free of corruption, collusion, and nepotism;
- b) Encouragement of public oversight is one way of implementation of democracy that needs to be developed in order that abuse of power by the apparatus could be minimized;
- c) In the organization of the state, providing services and protection of the citizen's rights by the government and the judicial apparatus is an important part that is inseparable from efforts to create justice and welfare.

Based on the Presidential Decree No. 44 of 2000, some local government also established local Ombudsmen by its own initiative. Establishment of local Ombudsman indicates that the regions have been trying to promote good governance at the local level. By establishing local Ombudsmen, it was expected to realize accountability and good

governance in the process of decentralization.<sup>12)</sup> Besides, the establishment of local Ombudsman was intended to fight maladministration in the local level.

Then to optimize the functions, duties, and

powers of the National Ombudsman Commission, the central government needed to establish a legal basis of Indonesian Ombudsman. This was in accordance with the mandate of People's Consultative Assembly Ordinance (TAP MPR)

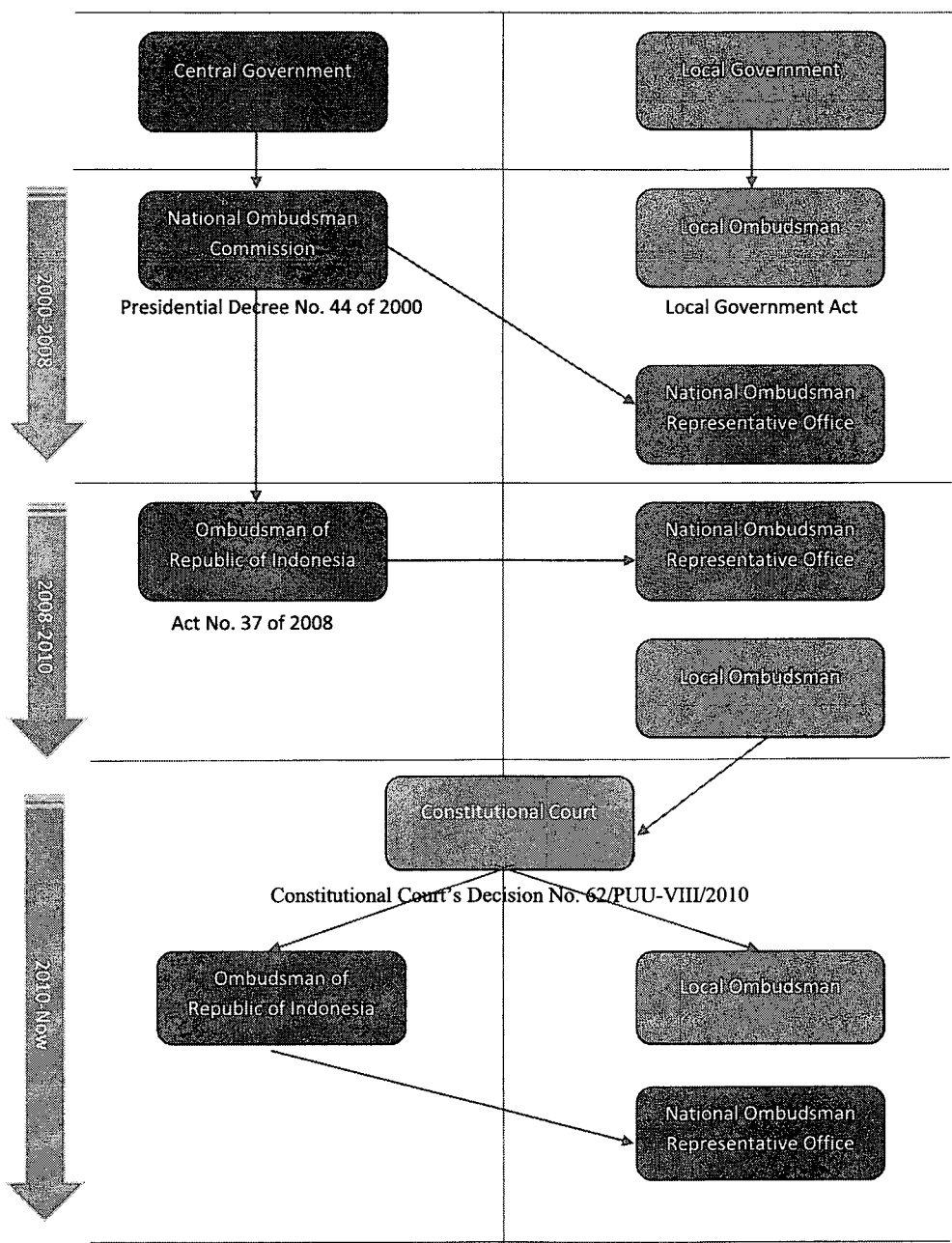


Figure 1. The Transformation Process of Ombudsman System in Indonesia

No. VIII of 2001 on the directions and policy recommendations of eradication and prevention of corruption, collusion, and nepotism, including introduction of the Ombudsman system by the statute.<sup>13)</sup> Finally, on October 7, 2008, the Head of Representative and central government issued Act No. 37 of 2008 on the Ombudsman of the Republic of Indonesia.

More detail about the transformation of Ombudsman system and the relationship between the National Ombudsman, Representative of National Ombudsman, and local Ombudsman could be seen in the following chart; Figure 1.

#### In the period 2000 – 2008

In this period, the form of initial Ombudsman system established by central government was a commission. It was called as Komisi Ombudsman Nasional (KON) or National Ombudsman Commission. Presidential Decree No. 44 of 2000 was a legal basis of National Ombudsman Commission in Indonesia.<sup>14)</sup> Although it was still weak as the legal basis, this presidential decree was a good effort in developing Ombudsman system in Indonesia.

Then in 2001, People's Consultative Assembly issued TAP MPR No. VIII/MPR/2001 that is about the mandate to the executive and legislative branch to enact a statute on the National Ombudsman. This decision gave a big chance for National Ombudsman to have a stronger legal basis.

In 2004, to make a National Ombudsman's service more accessible for the people particularly in the region, KON established 4 representative's office in North Sumatera Province, Yogyakarta Province, East Nusa Tenggara Province, and North Sulawesi Province.

In the same time, some local governments

also established local Ombudsmen including Yogyakarta Province in which there had been a representative office of National Ombudsman established by the central government. The government of Yogyakarta Province issued Governor Regulation No. 134 of 2004 on the local Ombudsman and Governor Regulation No. 135 of 2004 on the Private Ombudsman. The establishment of these local Ombudsmen was spirited on the Presidential Decree No. 44 of 2000 and local government Act. This presidential decree had inspired a local government to create its own local Ombudsman. This is consistent with the idea of the local government Act. The act provides that every local government has a power to manage their respective affairs including to create their own supervision system.

As seen in the chart above, the relationship between National Ombudsman and the representative offices are hierarchal. And National Ombudsman and representatives' office are in the same regime, while National Ombudsman and the local Ombudsman are in different legal regime. This means that there is no relationship between National Ombudsman or its representative office and local Ombudsman. Even though representative office of National Ombudsman is located in the same jurisdiction as local Ombudsman such as in Yogyakarta Province, it does not mean they have a relationship each other. In fact, both have the same function to supervise public service delivery in one province, but they do their own business separately. And the community may choose where they want to resolve their problem.

#### In the period 2008 – 2010

In 2008, the central government issued Act

No. 37 of 2008 on the Ombudsman of Republic of Indonesia. With this Act, they changed the status of National Ombudsman from a commission to a state organ. In 2009, the central government issued Act No. 25 of 2009 on the Public Service. This Act provides a special provision on the Ombudsman of Republic of Indonesia as an agency and grants the power to supervise the public service delivery. It means that the position of National Ombudsman as a watchdog agency is more strengthened in the Indonesia legal system.

In this period, National Ombudsman also established 3 representative offices. They are in West Java Province, East Java Province, and South Kalimantan Province. However, the enactment of Act No. 37 of 2008 on the Ombudsman of Republic of Indonesia arose a conflict on the existence of local Ombudsman. Through the Act, the central government didn't allow any other Ombudsmen except National Ombudsman. With this Act, it automatically eliminated the local Ombudsmen that have been established by local government in the regions. This prohibition was provided in Article 46 of Ombudsman Act. The Act had prohibited other institutions from using the name 'Ombudsman', except National Ombudsman. Moreover, it stated that 2 years after the enactment, all institutions that use the name 'Ombudsman' must change their name. This provision indicated that the central government wanted to decentralize the oversight system. And this provision might limit a local government's innovation provided by the Local Government Act.

In August 2010, the Mayor and Ombudsman of Makassar gathered all the other local Ombudsmen and discussed what they could do to maintain their local Ombudsmen. And

they decided to bring a lawsuit of constitutional challenge to the Constitutional Court Article 46 (1) and (2) of Ombudsman Act and Article 1 (13) of Public Service Act.<sup>15)</sup> In September 24, 2010, the lawsuit was formally filed. After spending about one year for the trial, Indonesian Constitutional Court issued the Decision No. 62 / PUU-VIII / 2010.<sup>16)</sup> The Court accepted the petition for Article 46 (1) and (2), while rejecting the petition for Article 1 (13) of Public Service Act. The Court stated that Article 46 (1) was unconstitutional. According to the Court, Article 46 (1) might violate the principle of legal certainty for the local Ombudsmen that has been legally established by the local regions. In addition, the word 'Ombudsman' has had a common sense and has been accepted internationally as an independent oversight body to accept public complaints. Meanwhile, the Court argued that there was no constitutional question for Article 1 (13) of Public Service Act. Article 1 (13) only applied to the Ombudsman established by the government. Nevertheless, it didn't mean that non-government organizations could not establish an Ombudsman system.<sup>17)</sup> Since the Constitutional Court's decision, the use of Ombudsman's name for other institutions is not a violation of the law.

#### **In the period 2010 – Present**

This period began after the issuance of Constitutional Court's decision No. 62/ PUU-VIII/ 2010. After Constitutional Court issued the decision, now there is no prohibition on establishing a local Ombudsman or using the name of Ombudsman for any purposes. And the local Ombudsmen are now allowed to continue their business. Through the decision No. 62/ PUU-VIII/ 2010, the Constitutional Court recognized local Ombudsman as a watchdog

agency as well as National Ombudsman and its representative. So now there is the dual system of Ombudsman in Indonesia.

This decision does not really affect the status of National Ombudsman in the Indonesia legal system and National Ombudsman representatives in the regions, either. The Constitutional Court decision didn't stop the establishment of Ombudsman's representative office. National Ombudsman has established representative's offices in 16 Provinces, in 2012, and in 9 Provinces in 2013. In 2016, National Ombudsman had their representative's offices in every province.

The prohibition to use Ombudsman's name has been void, and the local Ombudsman system has been well recognized. But the local Ombudsman is not included in the national regulation. Therefore, the position of local Ombudsman remains weak in Indonesia legal system and the local Ombudsman relies heavily on the commitment of local government.

### **C. Chances and Challenges of Indonesian Ombudsman in Advancing Public Services of Local Government**

Along with the implementation of local autonomy, we need to develop public service and make it accessible to the people. To make public service closer to the community, it is important to grant some autonomy to local regions. The essence of local autonomy and decentralization system is to give local governments the power to manage their own business and to enhance the quality of public services in the regions. With this power, local governments are encouraged to realize good governance in the local level through their own public service policy and community

engagement in the policy-making process.

However, the transferring the power to local governments does not necessarily have positive impact on the bureaucratic reform. There are a large number of abuse of power reported in the local governments. This is because many local governments do not commit themselves to reform their bureaucratic system and do not make innovations as expected. The government officials of local governments usually are reluctant to reform the process of public service delivery.

In the policy-making process, local governments rarely involve interest groups. In addition, government officials have no time to serve the people. They just busy themselves with the routine business and doing their own paperwork. The purpose of service for them is not for serving the people but for making the superiors happier. For instance, many local governments fail to implement "one stop service" in the process of licensing service.<sup>18)</sup> When someone wish to open his own business, he has to visit different several government offices. This might cause someone to take longer time and spend a lot of money.

The people in the local regions have not been satisfied with such low quality of public service provided by local government officials. The local governments have not been able to serve the people properly and not been able to give the access to get the rights of public services. The power of local governments even makes it easy for them to abuse of its power. And they don't have a section in their government for the people who want to complain about the public service. This indicates that the local governments have failed in democratizing public service in that they haven't listened to the people's voice. They need reform to deal



with this problem so that local government officials could devote themselves to listen to the voice of the people. One of such reform is the supervision of the actions by the bureaucrat. There are two kinds of such supervision systems; internal oversight and external oversight. The Ombudsman of the Republic of Indonesia employs external oversight of the public service providers.

Maladministration in local regions have been getting complicated and systemic. To deal with such maladministration, the Ombudsman system in Indonesia has some chances and challenges. The following will discuss various chances and challenges in the implementation of the Ombudsman system in order to fight the maladministration and to enhance public service delivery in local regions.

## **1. The Chances of Ombudsman System**

### **a) Strengthening of Ombudsman system in Indonesia legal system**

National Ombudsman Commission was the initial Ombudsman in Indonesia legal system. The role of National Ombudsman Commission was to supervise the public service delivery by the government. The subjects of the supervising included State/Local Government-Owned Enterprises, National Land Agency, Court, Police, Public Prosecutor, Local Governments, Departments and Ministries, Non-Department Agencies, Universities, Armed Force, and so on.<sup>19)</sup> In the process of supervising, the National Ombudsman Commission adhered to the principle of listening to both sides impartially. The National Ombudsman Commission had no authority to prosecute or to give the sanctions. It just gave a recommendation to conduct self-correction. The settlement of the complaint by the National Ombudsman Commission was

one of alternative dispute resolutions, which excluded other methods that would require a long time and much cost otherwise.

As for the basic tasks of the National Ombudsman Commission as provided in Article 4 of Presidential Decree No. 44 of 2000, the followings are included:

- 1) raising awareness of the institution of Ombudsman;
- 2) doing the coordination and/or cooperation with government agencies, universities, NGOs, experts, practitioners, professional organizations and others;
- 3) performing a measure to follow up reports or information on the occurrence of irregularities by the organizers of the State in providing public services;
- 4) preparing the draft of law on the National Ombudsman.<sup>20)</sup>

Ombudsman of Indonesia is an independent institution to receive complaints from individuals or residents who become victims of maladministration, and to investigate on the complaint. The individuals or residents make complaints because the decisions or actions of public officials are inappropriate. The reason of the complaints varies deviated, arbitrary, irregular or illegitimate action to abuse of power, unnecessary delays or equity. Ombudsman is not just a system to resolve complaints on a case-by-case basis. In fact, main purpose of Ombudsman is taking the initiative to develop an administrative or systemic improvement in an effort to improve the quality of public service.

Then, through Act No. 37 of 2008 on the Ombudsman of Republic of Indonesia, the institution of National Ombudsman has been strengthened and changed from a commission to a state agency. After the enactment of this

Act, then the National Ombudsman Commission transformed into Ombudsman of the Republic of Indonesia. The transformation of Ombudsman status made Ombudsman more independent and free from the interference of government power.

Indonesian Ombudsman is now a state agency that has authority to oversee the organization of the public service including those held by State-owned enterprises, Regional-owned enterprises, and legal entities. Moreover, now Indonesia Ombudsman oversees the organization of private bodies or individuals who are given the task of organizing the public service, if some or all of their funds are from the State.<sup>21)</sup> The function of the Ombudsman is to oversee the government activities through the complaints from the general public. It aims to improve the protection of the rights of people in attaining public services and welfare.

Regarding to improving the legal basis of Ombudsman, the government sought to revise the constitution in order to optimize the role of Ombudsman in the community. Ade Komarudin, the Chairman of House of Representatives, supported strengthening of the Ombudsman system in the constitution. He argued that the existence of the Ombudsman should be enhanced so that it could bind public officials to implement a solution of Ombudsman.<sup>22)</sup> By providing Ombudsman system in the constitution, it is expected to balance the Ombudsman position with other government institutions and to make the Ombudsman's recommendations have a stronger legal force.

#### **b) The establishment of National Ombudsman representative offices in the regions**

Since most of public service affairs are organized by local governments, it is necessary to establish

a representative of National Ombudsman in a region. Act No. 37 of 2008 has provided the provision that allows the National Ombudsman to establish a representative in regions. According to this Act, the representative of the National Ombudsman is an office in a province or regency/city that has hierarchical relationship with the National Ombudsman.<sup>23)</sup> Every representative office is led by a chief of the representative office who is selected by the chairman of National Ombudsman. The Ombudsman representative office has the same functions, duties, and authorities as National Ombudsman.<sup>24)</sup> Nevertheless, the National Ombudsman representative has no authority to make a recommendation as the National Ombudsman can do.

According to Act No. 37 of 2008, the establishment of the representative office aims to optimize National Ombudsman's role and make it close to the people in resolving complaints. Besides Ombudsman Act, Act No. 25 of 2009 on the Public Services also provides a provision on the Ombudsman representative office. Article 46 (3) of Ombudsman Act states that the National Ombudsman has to establish a representative office in the regions to support National Ombudsman's duties. It has to be established in 3 years of enactment of this Act.<sup>25)</sup>

In Act No. 23 of 2014 on the Local Government, it mentioned about the Ombudsman. Article 351 provides that the public may file a complaint to local government, Ombudsman, and/or local representative of the National Ombudsman. The mention of Ombudsman in this provision indicates that the Ombudsman system is well recognized in the local autonomy regime. In addition, the Local Government Act has strengthened the position of Ombudsman.

Regarding to the Ombudsman representative

office, it is specifically regulated in the Government Regulation No. 21 of 2011 on the Establishment, Arrangement, and Job Description of Indonesia's Ombudsman Representative in the Region. According to this regulation, establishment of Ombudsman representatives aims to give the public an access to get Ombudsman services, to improve the effectiveness and efficiency of supervision by the Ombudsman, and to advance the quality of public service.

**c) The improvement of National Ombudsman's authority**

Act No. 37 of 2008 has strengthened the powers of the National Ombudsman. Before this act was enacted, public officials didn't necessarily follow the recommendations of the Ombudsman.<sup>26)</sup> With this act, the Ombudsman may impose administrative, or criminal, sanction on the parties that don't follow the recommendation.<sup>27)</sup> The criminal sanction will be imposed on any person who obstructs the Ombudsman's conducting the investigation.<sup>28)</sup>

In addition, Ombudsman Act gives the Ombudsman the authority to settle a dispute through mediation and conciliation at the request of the parties.<sup>29)</sup> The Ombudsman is also authorized to conduct an investigation into the object of public service reported, without prior notice.<sup>30)</sup> The Presidential Decree No. 40 of 2000 didn't provide this investigation without notice. The investigators of Ombudsman still need to pay attention to the conditions and regulations, public order, and decency. To maintain neutrality, Ombudsman Act contains the rules that prohibit the investigators of the Ombudsman having a case when it rises a conflict of interest.

This Act also gives two exclusive rights

to Ombudsman. First, it gives the right of immunity. It is the right given to support the implementation of the tasks and powers of the Ombudsman.<sup>31)</sup> With this right, member of the Ombudsman shall not be arrested, detained, interrogated, prosecuted or sued in the court. Second, Ombudsman has the right to call the parties by law. When complainant or witnesses was called three times properly but they do not meet the call of the Ombudsman, then the Ombudsman can call them by force with the help of police.<sup>32)</sup>

The Ombudsman may also give an advice to the public service providers in improving public services and preventing maladministration according to Act No. 25 of 2009 on the Public Service. Ombudsman can also do an investigation by its own initiative. It could be performed without any complaints from the public.

**d) Support from other regulations**

In addition to Act No. 37 of 2008, Act No. 25 of 2009 on the Public Services and Act No. 23 of 2014 on the Local Government also provide the existence of the Ombudsman in implementing public service delivery.

Public Service Act provides that an individual in the community can file a complaint to the provider, Ombudsman, and/or People's Representative Council on public service delivery.<sup>33)</sup> The provider and/or Ombudsman have to give a receipt of the complaint. The provider and/or the Ombudsman is obliged to respond to public complaints at least 14 (fourteen) days from the time the complaint was received.<sup>34)</sup> The Ombudsman is obliged to receive and process any complaint to the public authorities regarding the public service delivery in accordance with this Act.<sup>35)</sup>

Regarding the authority of the Ombudsman, Article 46 (6) of Public Service Act states that the Ombudsman shall undertake mediation and conciliation to resolve complaints at the request of the parties. A representative of the Ombudsman in the region may make the resolution of the complaint. Besides, the Ombudsman can conduct mediation, conciliation, and special adjudication in terms of completion of compensation.<sup>36)</sup>

In the Local Government Act, Article 351 (1) states that the public has the right to sue the public service providers to local governments, Ombudsman, and/or Regional People's Representative Council. The public can file the complaints against the providers who do not carry out their obligations and/or violate the regulations.

According to Local Government Act, the head of local government is required to implement Ombudsman's recommendation as a follow up of public complaints.<sup>37)</sup> The head of the local government who does not implement the recommendations of the Ombudsman will be subject to sanctions. The sanctions could be special coaching by the ministry concerned. And his authority and duties will be carried out by the deputy head of a region or designated official.<sup>38)</sup>

According to Local Government Act, a local government shall ensure the attainment of public service based on local government affairs and the principles of the public service.<sup>39)</sup> Local governments are also encouraged to build public service management.<sup>40)</sup> The management of the public service includes the following: a. implementation of services; b. management of public complaints; c. management of information; d. internal oversight; e. community counseling; f. consultation services; and g. other public

services in accordance with the provisions of the legislation.<sup>41)</sup> In the implementation of public management, the local government may form a communication forum involving local governments, communities and stakeholders concerned.<sup>42)</sup>

To enhance the quality of public service in a region, Local Government Act provides the Ombudsman shall work as external oversight. The Ombudsman system works independently and impartially. The Ombudsman system is free from the interference of the central government and the local governments as well as other institutions. The Ombudsman system will solve the problem with a persuasive approach by listening to the information of both parties.

## **2. The Challenges of Ombudsman System**

### **a) Human resources**

Human resources are a crucial factor in an organization. An organization generally is a group of humans who are working together to accomplish a specific purpose.<sup>43)</sup> Development of human resources is also important to improve the quality of the work of the organization. It is so not only to solve the problem that they are facing now, but also to deal with future challenges. However, in fact, the human resources have not been developed well in the Ombudsman in Indonesia.

To support the performance of the National Ombudsman in dealing with the problems of the human resources, the government has issued the Government Regulation No. 64 of 2012 on the Human Resource Management System on the Ombudsman of the Republic of Indonesia. Human resource management on the Ombudsman system is used to manage the functions of human resources on the Ombudsman.<sup>44)</sup>

Human resources management system at the National Ombudsman covers wide variety of evaluation factors, which include planning, recruitment and selection, performance assessment, career development, income maintenance and social security, employee relations, appointment and dismissal.<sup>45)</sup> Through those instruments, National Ombudsman is expected to be able to improve its human resources. Yet, enhancing capacity of human resources is not as easy as it looks. The Chairman of National Ombudsman, Amzulian Rifai, told that the challenges of National Ombudsman are human resources and the regulation, which get in the way of reform of the National Ombudsman.<sup>46)</sup> One example was seen when the National Ombudsman held a selection for head of Ombudsman's representative in Central Java in 2016. In the selection process, they had 32 applicants who took part in. But unfortunately, the selection process was very difficult to clear, and all applicants are not qualified.<sup>47)</sup> This proves that the quality of human resources is not good enough.

Besides facing the problem of human resource quality, National Ombudsman also faces the problem of the quantity of human resources. Because of the lack of human resources, it takes a longer time for them to deal with the complaints. Until the end of 2016, the number of employees in the center and all National Ombudsman representatives were just 559. But the number of complaints that have to be resolved has been increasing each year. This can be seen from the diagram below; Figure 2.

Human Resources is an important factor in supporting National Ombudsman's activity. An increasing number of the complaints in every year makes it difficult for National Ombudsman to enhance the quality and quantity of

human resources. So that organizational activities can run effectively. According to the regulations on the Ombudsman, the number of the people at the central Ombudsman office is nine, including the Chairman and Vice Chairman of Ombudsman.<sup>48)</sup> And the number of Ombudsman officers in each representative is five, including the Chief Representative and the Ombudsman Assistant. Because of this limited number of human resources, there have been lots of delayed cases reported. To deal with the problem of heavy workload, they need more human resources. However, the addition of members of Ombudsman depends on the budget. The lack of the budget makes the Ombudsman figure out other options to maximize their job performance.

#### b) Law enforcement

Building trust of the public is important for the Ombudsman in changing society's mindset toward the government. Before the reform, the ways of the government did their business had lots of problems, such as corruption, collusion, and nepotism.<sup>49)</sup> Internal oversight conducted by the government itself did not meet the expectation of the public.<sup>50)</sup> Objectivity and accountability became the problem when the

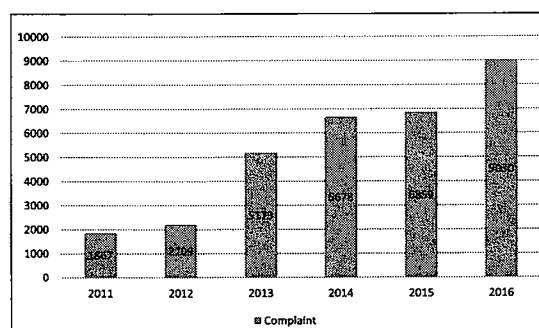


Figure 2. The Number of Complaints Per Year

Data Sources: an annual report of Ombudsman of Republic of Indonesia 2011 – 2016

internal oversight tried to oversee an institution in which it was a part of such institution. Then it is needed to introduce an external oversight system that is more independent and supported by the public.

Because public participation is an important part of Ombudsman system, the National Ombudsman is expected to do their best effort to maintain the public trust on the government. Nevertheless, most Indonesian people have not known about the existence of the Ombudsman and its function partly because the Ombudsman is a newly introduced institution in reformation era. And more importantly the Ombudsman didn't socialize themselves with the public. They didn't have much communication with the people who lived in the regions. The community is a major element in the system of supervision conducted by the Ombudsman. According to the National Ombudsman annual report, over the 13 years (from 2000 to 2013), there had been approximately 17,000 maladministration cases. The figure was small if compared with the Commonwealth Ombudsman of Australia. For example, in 2000 to 2001, Ombudsman of Australia received and handled more than 20,000 cases.<sup>51)</sup> It indicates that the Ombudsman system was not familiar to the people in Indonesia.

In addition to the challenge that the Ombudsman has not been widely known by the people of Indonesia, the effectiveness of the Ombudsman is another big problem. So far, the people have just looked at the results that were achieved. Benchmark on the success of the Ombudsman could be seen from the number of the legal product issued. The legal product of Ombudsman is a recommendation. Recommendation is a conclusion, opinion, and suggestion made based on the result of

investigation of the Ombudsman which would be sent to the superior officer of the Party Complained for further implementation and/or follow up in the framework of improvement of the managerial quality of good public administration.<sup>52)</sup>

Most of Ombudsman's recommendations are often overlooked.<sup>53)</sup> Chair of the Ombudsman of the Republic of Indonesia, Amzulian Rifai, told the recommendations of the Ombudsman over the maladministration given to ministries or institutions were still ignored.<sup>54)</sup> The level of compliance of government agencies in implementing the recommendations of the Ombudsman of the Republic of Indonesia is very low. In the last few years, only 40 % of the Ombudsman's recommendations are followed, while 60 % of the recommendations of the Ombudsman are ignored. However, in Thailand, the government follows the recommendations of the Ombudsman in 90% of the cases. In Australia, it reached 99%.<sup>55)</sup>

The Ombudsman Act provides that reported agencies and the superior officer of them are required to implement the recommendation of Ombudsman.<sup>56)</sup> Those who violate the Article would be subject to administrative sanctions.<sup>57)</sup> Even so, the recommendations of the Ombudsman is actually not legally binding. It is just morally binding. Moreover, administrative sanction is difficult to implement because the sanction is carried out by public officials themselves. Meanwhile, the public officials still lack good intention to implement the recommendations.

There is a principle shared in the Ombudsman all over the world, with some exceptions. The principle is generally called magistrate of influence, which means the Ombudsman should be more like a magistrate rather than

adviser. They think that Ombudsman should have much influence upon the parties, and that the Ombudsman should be able to answer the challenges of society to be an effective watchdog agency. Through a persuasive approach, the Ombudsman positions itself as a partner for both parties. The Ombudsman is expected to give *win-win* solution for complainant and party complained in a settlement of the complaints.

#### **c) People's complaint vs Government's counter-claim**

The public participation is indispensable of the existence of the Ombudsman when they resolve the problems of maladministration. Most Ombudsmen work based on the complaints from the people. However, in practice, not all the complaints are the issue of maladministration. Sometimes there are even complaints that simply are allegations against the public officials, even defamation as well. In that situation, the government officials could do a counter-claim if they refuse the complaint.

According to Article 310 (1) of the Criminal Code, defamation is defined as the act of attacking the honor or good name of someone by imputing that person, and the public knew it. According to this provision, anyone who intentionally does this action could be put in prison for nine months, at most, or fines of 4500 rupiahs, at most.

In addition, Act No. 11 of 2008 on The Information and Electronic Transaction (ITE)<sup>58)</sup> also prohibits defamation. Article 27 (3) states that defamation is one of the acts that is prohibited. Anyone who intentionally disseminates an electronic information containing insult and defamation as mentioned in Article 27 (3) of ITE Act would be charged a maximum 6 years' imprisonment and/or 1

billion rupiahs' maximum fine.<sup>59)</sup> Even Article 36 set that anyone intentionally, and without legal rights, doing the deed as referred to Article 27 to Article 34 which resulted in harm to others will be punished a maximum 12-year imprisonment and/or a maximum fine of 12 billion rupiahs.<sup>60)</sup>

Regarding the provision of sanctions, sanctions in the ITE Act is harsh than the sanctions in the Criminal Code. Both of these rules can be applied to anyone who is found guilty of defamation. Although the member of Ombudsman has the immunity from legal sanctions,<sup>61)</sup> but the immunity would not be applied if the member of Ombudsman is found to be guilty of these crimes.<sup>62)</sup> In resolving complaints, officers of Ombudsman are prohibited to use their immunity's right when the complaints contain political interest.<sup>63)</sup> Therefore, the Ombudsman must be careful in handling the case coming from the public or its own initiative.

#### **d) Discretionary power of government agency**

The term of discretion become popular in Indonesia after the era of reform and local autonomy. Act No. 22 of 1999 on The Local Government is the basis of the initial implementation of the local autonomy. The enactment of the Local Government Act encourages local elites in the region to use the discretionary power and make a breakthrough and/or policy, in order to make improvement within their jurisdiction. According to the Oxford Dictionary, discretion means the freedom to decide what should be done in a particular situation. In the Government Administration Act,<sup>64)</sup> discretion is defined as a decision or action performed by government officials to resolve a question that actually happens in

their jurisdiction. Government officials use the discretion when legislations provide several options, didn't regulate action of public officials, provide just incomplete or unclear instruction to the public officials on how to do their job, and/or when there is governance stagnation.

Furthermore, Act No. 23 of 2014 on the Local Government became the basis for a local government to perform a variety of innovations in order to improve its own respective area. The Act is clearly established for regional innovation or discretion for local government officials. Article 386 (1) states, "in order to increase the performance of local government, local government can do innovation". The innovation is all forms of renewal in local government.<sup>65)</sup> This provision is set in Article 387 through 390.

In addition to the Local Government Act, the President of Indonesia, Joko Widodo, supported the idea of discretionary power. He asked law enforcement agencies not to arrest policy makers including the head of the region. The message was conveyed by the President when giving direction to the Chief Prosecutor and the Head of Police, in Jakarta on July 19, 2016. The same statement was presented by the President in the Palace of Bogor, on August 24, 2015.<sup>66)</sup> Essentially, the President asked the law enforcement agencies not to make allegation against the heads of local government when the case is related to the use of their discretion.

With the Local Government Act and statement by the President, the use of discretion by government officials in a region is expected to encourage development and to overcome the violation of the law by government officials in the region.<sup>67)</sup> Since the implementation of local autonomy in 1999, there were about 70 percent of the total heads and deputy heads of regions who had been dragged to the court.

Surprisingly, the fact did not change the situation.<sup>68)</sup> Komisi Pemberantasan Korupsi (KPK) or Corruption Eradication Commission stated that in 2016 there were still 10 heads of local governments involved in corruption cases. And in 2017, there were 7 heads of local governments also involved in corruption cases.<sup>69)</sup> Overall, from 2004 to June 2017, KPK statistics shows that there were 78 heads of local governments arrested by the KPK. The details are 18 governors and 60 mayors or regents and deputies.<sup>70)</sup>

The large number of government officials in regions that violate the law is an evidence of the abuse of power in the use of the discretion. In the era of local autonomy, many surveys and research reveal bad situation of government bureaucracy in the region.<sup>71)</sup> The abuse of power by local government agency happens when there is no check and balances mechanism. Therefore, the use of the discretionary power needs to be supervised. The abuse of power could be seen from the number of complaint addressed to the local government below; Figure 3.

The diagram shows that the number of complaint addressed to the local government

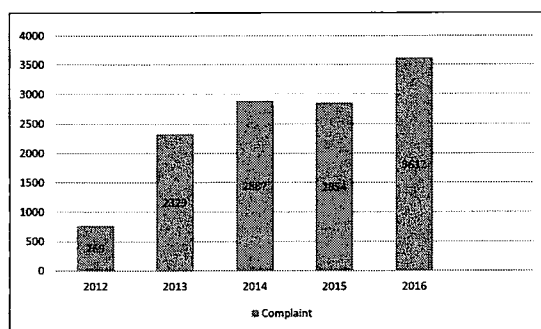


Figure 3. The Number of Complaints filed to Local Government

Data Sources: an annual report of Ombudsman of Republic of Indonesia 2012 – 2016



steadily increased in the last 5 years. This fact may indicate two things. First, the public participation has increased. And second, the prevention of maladministration in the regions has not been well successful. In addition, granting the discretionary power to the local government could increase abuse of power. This happens when there is no commitment of the head of local government to do bureaucratic reform and the check and balances mechanism is not working well.

As a watchdog agency, the Ombudsman in a region is expected to minimize abuse of power. The Ombudsman must ensure that government officials who use discretionary power do their job in accordance with its purpose. As far as legal norms for regional innovation and discretion are applied properly, then the officials don't have to worry about their policy when they organize a public service.

Moreover, the neutrality of Ombudsman is very important when they settle a case. This is in accordance with the principle of impartiality as one of the universal principles of the Ombudsman. Therefore, the function of Ombudsman is to connect complainant and the party complained so that the problem can be understood by both parties.<sup>72)</sup> Article 29 of Ombudsman Act mentions that in examining a case, the Ombudsman must follow the principle of being independent, impartial, non-discriminative and free of charge. By doing so, the Ombudsman must seek to recover and balance the relationship between the complainant and party complained.

#### **e) Arising of local Ombudsman by local government's initiative**

Aside from the presence of Ombudsman's representatives provided by National

Ombudsman, some regions have also initiated the creation of the Ombudsman in their respective regions. They are the Province of Yogyakarta, Asahan Regency, Pangkalpinang, Bangka, Makassar city, and the Province of East Java, (though by the name of KPP). And over 25 regions are planning to establish a local Ombudsman.<sup>73)</sup>

Creating local Ombudsman by local government's initiative was officially based on the Presidential Decree No. 44 of 2000 on the Nasional Ombudsman Commission. As an effort to realize bureaucratic reform in the region, local Ombudsman has been important agency to oversee local government activities.

As seen in the process of transformation of Ombudsman system in Indonesia, the Constitutional Court's Decision No. 62/PUU-VIII/2010 has also clarified that the use of Ombudsman name is not violation of law. Recognition of local Ombudsman through this decision has strengthened an argument that the local government has the rights to make innovations as provided in the constitution and the local government Act. Nevertheless, the decision has created dual system of Ombudsman in Indonesia. After the decision, local governments may use the name of Ombudsman for the local Ombudsman in their respective region even though there has been a National Ombudsman representative office.

The local Ombudsman in the region is very important because of the greater role of local government in providing public services. With the discretionary power, the local government plays an important role in establishing local Ombudsman in the region. Establishing local Ombudsman by local government's initiative is an evidence that the local government has an innovation and commits to enhance the quality

of public service. Yet, the existence of local Ombudsman quite depends on the commitment of local government. Therefore, dependence on local government affects the effectiveness of local Ombudsman in carrying out its role.

In addition, Ombudsman Act doesn't cover local Ombudsman as a part of National Ombudsman system. Although National Ombudsman has the same function as local Ombudsman, they are in the different legal system and they have no relationship each other. Then it would affect to the effectiveness in doing their jobs. This might undermine the oversight function of the Ombudsman system in Indonesia.

#### D. Conclusion

Local government has the power to organize its own business based on the principle of autonomy and decentralization. However, with this power, public officials of the local government do maladministration. Therefore, the existence of Ombudsman system in the region becomes essential one to minimize the maladministration and protect the rights of the community.

As a public service watchdog agency, the National Ombudsman has great opportunities in carrying out its role. Act No. 37 of 2008 on the Ombudsman of Republic of Indonesia has strengthened the status of the National Ombudsman from a commission to a state agency. This Act also provides the establishment of the Ombudsman's representatives in the regions to improve public access. The improvement of National Ombudsman's authority is also important to support National Ombudsman in resolving a complaint. In

addition, National Ombudsman gets a support from other Acts such as public service Act and local government Act in integrating the functions of the National Ombudsman and other law enforcement agencies.

In advancing public services of local government, the National Ombudsman faces various challenges. Human resource limitation is a challenge in handling the case of maladministration. Building the public trust is a homework for the National Ombudsman as a magistrate of influence through the persuasive approach. Although the National Ombudsman had already been strengthened by the statutes, but there are still many public officials who ignored the National Ombudsman's recommendations. The National Ombudsman officers should be careful with the manner in doing their job, even though they have the right of immunity. In addition, the National Ombudsman should work professionally when confronting government official who has the discretionary power. Moreover, establishing of local Ombudsmen by local government's initiative would be a special challenge for National Ombudsman in advancing public services of local government.

#### Notes

- 1) Article 34 (3) of Indonesian Constitution states that the state has to provide a sufficient medical and public service facilities.
- 2) The local autonomy was imposed in Indonesia through Act No. 22 of 1999 on the Local Government. Furthermore, this Act has been changed in several times, the last time by Act No. 9 of 2015 on the Second Amendment of Act No. 23 of 2014 on Local Government.

- 3) Decentralization is a surrender of government affairs by the central government to the autonomous region based on the principle of autonomy.
- 4) Local government, according to Local Government Act, is given almost all authority pertaining to public administration except for five areas of authority which is the authority of the central government, namely the field of foreign policy, defense, judicial, fiscal and monetary, and religion.
- 5) Agus Dwiyanto, *Mengembalikan Kepercayaan Publik Melalui Reformasi Birokrasi (Restoring public trust through bureaucratic reform)*, PT Gramedia Pustaka Utama, Jakarta, 2011, p. 59.
- 6) See an Annual Report of Ombudsman of Republic of Indonesia, 2012
- 7) See an Annual Report of Ombudsman of Republic of Indonesia in 2014 and 2015.
- 8) Endang Larasati, *Pelayanan Publik dan Demokrasi* (Public Service and Democracy), Jurnal Ilmu Administrasi dan Kebijakan Publik, available at [http://eprints.undip.ac.id/41099/1/ARTIKEL\\_PELAYANAN\\_PUBLIK\\_DAN\\_DEMOKRASI.pdf](http://eprints.undip.ac.id/41099/1/ARTIKEL_PELAYANAN_PUBLIK_DAN_DEMOKRASI.pdf), last visited, December 19, 2016.
- 9) Hartono, *Panduan Investigasi untuk Ombudsman Indonesia* (The Ombudsman Investigation Guide Book for Indonesia), The Asia Foundation Indonesia, 2003, compare with Hendra Nurtjahyo, *Memahami Maladministrasi* (Understanding Maladministration), Ombudsman of Republic of Indonesia, First Edition, August 2013, p. 4
- 10) Article 1 (3), Act No. 37 of 2008 on The Ombudsman of Republic of Indonesia.
- 11) See Article 2 of Presidential Decree No. 44 of 2000 on The National Ombudsman Commission
- 12) Budi Masthuri, *Mengenal Ombudsman Indonesia* (Understanding Indonesian Ombudsman) Pradnya Paramita, Jakarta, 2005, p. 80
- 13) see Article 2 (6) of TAP MPR No. VIII of 2001
- 14) See the Annual Report of Ombudsman of Republic of Indonesia, 2016.
- 15) Article 46 of Ombudsman Act stated that “(1) By the time this law takes effect, the word of “Ombudsman” which has been used as the name of institution, agency, legal person, publication or others which do not constitute Ombudsman institution performing the function and duties according to this Law shall be replaced by other name within the period of 2 (two) years at the latest as of the date of this Law takes effect. (2) The institution, agency, legal person, publication or others which fail to comply with the provisions as specified under paragraph (1) shall be regarded as illegally using the name of “Ombudsman”. “
- The Article 1 (13) of Public Service Act states that “Ombudsman is a state organ that has the power to supervise public service organized by the government, including state/local government-owned enterprises, as well as private agency, or individuals who are given a special task to provide public service which the part or whole funds have the sources from the state budget and/or regional government budget.”
- 16) Constitutional Court Decision No.62/PUU-VIII/2010, available at <http://www.mahkamahkonstitusi.go.id/index.php?page=web.Resume&id=1&kat=1&cari=No.+62+%2F+PUU-VIII+%2F+2010>, accessed August 2017
- 17) see Constitutional Court Decision No. 62/ PUU-VIII/ 2010
- 18) Indonesia Investments. Com, Indonesia’ s One-Stop Investment Licensing Service at BKPM Launched, available at <https://www.indonesia-investments.com/news/todays-headlines/Indonesia-s-one-stop-investment-licensing-service-at-bkpm-launched/item5256?>, accessed on September 20, 2017.
- 19) See Article 2 of Presidential Decree No.44 of 2000 on The National Ombudsman Commission.
- 20) See Article 3 of Presidential Decree No.44 of 2000 on The National Ombudsman Commission.
- 21) Article 1(1) of Act No. 37 of 2008 on the Ombudsman of Republic of Indonesia.
- 22) Nabilla Tashandra, *Ketua DPR Dukung Penguatan Lembaga Ombudsman* (The Chairman Of Legislative Assembly Supports Strengthening Ombudsman Institution), Kompas.com, available at

<http://nasional.kompas.com/read/2016/07/26/18000081/ketua.dpr.dukung.penguatan. lembaga.Ombudsman>, accessed on February 10, 2017.

- 23) In Article 5 (2) and 43 (1) of Act No. 37 of 2008, National Ombudsman may establish its representative in the province and/ or regency/ city. The Ombudsman representative offices shall have hierarchical relationship with the National Ombudsman and they shall have a chief of the representative office.
- 24) See Article 5, 6, and 7 of Government Regulation No. 21 of 2011 on the Establishment, Arrangement, and Job Description of Indonesia's Ombudsman Representative in the Region.
- 25) Article 46 (4) of Public Service Act
- 26) See Article 38 (1) of Ombudsman Act. The party complained and the superior of the party complained shall comply to perform the Recommendation of the Ombudsman.
- 27) See Article 39 of Ombudsman Act. The party complained and the superior of the party complained violating the provisions as specified under Article 38 (1), (2) or (4) are subject to the administrative sanction pursuant to the provisions of laws and regulations.
- 28) See general explanation of Ombudsman Act. Article 44 describes, "Anyone who obstructs the Ombudsman in conducting an examination or investigation is convicted with imprisonment of no longer than two years or a maximum fine of Rp. 1,000,000,000.
- 29) See Article 8 (1) e of Ombudsman Act
- 30) See Article 34 of Ombudsman Act
- 31) See Article 10 of Ombudsman Act
- 32) Article 31 states, "if the reported agency and witnesses as stipulated in Article 28 (1) a have been called by Ombudsman three times properly but they do not meet the call with a valid reason, the Ombudsman may request the police to bring them by force".
- 33) See Article 40 (1) of Ombudsman Act
- 34) See Article 44 (1) of Ombudsman Act
- 35) See Article 46 (1) of Public Service Act
- 36) See Article 50 (5) of Public Service Act.
- 37) See Article 351 (4) of Local Government Act
- 38) See Article 351 (5) of Local Government Act
- 39) See Article 344 (1) of Local Government Act
- 40) See Article 344 (2) of Local Government Act
- 41) See Article 345 (1) of Local Government Act
- 42) See Article 345 (2) of Local Government Act
- 43) See Oxford; Advanced Learner's Dictionary, New 8<sup>th</sup> Edition, Oxford University Press, 2010
- 44) See Article 1 (2) of Government Regulation No. 64 of 2012 on Management System of Human Resources of Ombudsman of Republic of Indonesia.
- 45) See General Explanation of Government Regulation No. 64 of 2012 on Management System of Human Resources of Ombudsman of Republic of Indonesia.
- 46) Nabilla Tashandra, *supra* note 22
- 47) Ombudsman of Republic of Indonesia, *Pengumuman Hasil Psikotes Kepala Perwakilan dan Calon Asisten Ombudsman RI* (Announcement of Psychological Test Results for Head of Representative and Candidate of National Ombudsman Assistant) available at <http://www.Ombudsman.go.id/index.php/berita/pengumuman/1989-pengumuman-hasil-psikotes-kepala-perwakilan-dan-calon-asisten-Ombudsman-ri-tahun-2016-batch-2-gelombang-2.html>, last update, December, 27 2016.
- 48) See Article 11 of Ombudsman Act
- 49) See General Explanation of Ombudsman Act.
- 50) Ibid.
- 51) Yasmin Muntaz, *Memahami Tantangan Ombudsman RI* (Understanding the challenges of Indonesian Ombudsman), National Sindo News, available at <https://nasional.sindonews.com/read/1050108/18/memahami-tantangan-Ombudsman-ri-1443855577>, last visited on March 20, 2017
- 52) See Article 1 (7) of Ombudsman Act
- 53) Nabilla Tashandra, *Ombudsman berharap rekomendasinya dipatuhi* (Ombudsman hopes

- its recommendations are obeyed, National Kompas, available at <http://nasional.kompas.com/read/2016/03/03/13553651/Ombudsman.Berharap.Rekomendasinya.Lebih.Dipatuhi>, last visited on March 23, 2017
- 54) Mohar Syarif, *Rekomendasi Ombudsman kerap diabaikan* (Ombudsman recommendations are often ignored), Neraca, available at <http://www.neraca.co.id/Article/66398/rekomendasi-Ombudsman-kerap-diabaikan>, last visited on March 24, 2017
- 55) Tempo.Co., *60 persen lembaga tak patuhi rekomendasi Ombudsman* (60 percent of agencies do not obey Ombudsman recommendations), Tempo.Co., available at <https://m.tempo.co/read/news/2014/11/07/078620196/60-persen-lembaga-tak-patuhi-rekomendasi-ori>, last visited on March 24, 2017
- 56) See Article 38 of Ombudsman Act
- 57) See Article 39 of Ombudsman Act. The administrative sanctions could be a written reprimand, release of office, decrease a rank or salary, and dismissal with disrespect.
- 58) In Indonesian language, the Act is Informasi dan Transaksi Elektronik. So, the ITE is more common abbreviation to refer to the Act.
- 59) See Article 45 (1) of the ITE Act
- 60) Article 51 paragraph (2) of the ACT ITE mention "anyone who meets the element referred to Article 36 is convicted with imprisonment of no longer than 12 years and/or a maximum fine of Rp 12,000,000,000
- 61) See Article 10 of Ombudsman Act.
- 62) See explanation of Article 10 of Ombudsman Act.
- 63) Article 40 states, "the Chairman, Vice Chairman, and personnel of the Ombudsman are banned in participating checking a complaint or information that contains or may rise a conflict of interest among them".
- 64) See Article 1 (9) of Act No. 30 of 2014 on the Government Administration.
- 65) See Article 386 (2) of Local Government Act
- 66) Arie C. Meliala, *Kriminalisasi Kepala Daerah, Kajari dan Kajati Akan Dicotot* (Criminalization of the Head of Region, Head of the Public Prosecutor's Office and the High Prosecutor's Office will be Removed), Pikiran Rakyat. Com, available at <http://www.pikiran-rakyat.com/nasional/2016/07/19/kriminalisasi-kepala-daerah-kajari-dan-kajati-akan-dicotot-375147>, last visited on April 12, 2017
- 67) Dana Aditiasari, *Banyak Pejabat yang terjerat hukum karena aturan yang kami buat* (Many officials are punished for the rules we make) , Finance Detik.Com, available at <https://finance.detik.com/berita-ekonomi-bisnis/d-3192158/sofyan-djalil-banyak-pejabat-terjerat-hukum-karena-aturan-yang-kita-buat>, last visited on February 17, 2017.
- 68) Kaleidoskop 2014, *Sejak Otonomi Daerah, 70 Persen Kepala dan Wakil Kepala Daerah Terjerat Korupsi* (Since the Implementation of Local Autonomy, Head and Deputy of Local Governments Are Involved in Corruption), available at <http://www.tribunnews.com/nasional/2014/12/25/sejak-otonomi-daerah-70-persen-kepala-dan-wakil-kepala-daerah-terjerat-korupsi>, last visited Mart 23, 2017
- 69) Edmiraldo Siregar, *Kepala Daerah Menjadi Tersangka Korupsi* (Head of Local Government Becomes Corruption Suspect), available at <http://news.liputan6.com/read/3110149/7-kepala-daerah-tersangka-korupsi-2017>, last visited on June 20, 2017
- 70) Robertus Belarminus, *Hingga September 2017, 5 Kepala Daerah Ditangkap KPK, Siapa Saja Mereka?* (Until September 2017, 5 Heads of Local Governments Are Arrested By KPK, Who Are They?), available at <http://nasional.kompas.com/read/2017/09/19/07000031/hingga-september-2017-5-kepala-daerah-terjaring-ott-kpk-siapa-saja-mereka?page=all>, last visited on May 17, 2017
- 71) Yudi Kurniawan, *Pengamat: Sewenang-wenang Copot ASN, Reformasi Birokrasi Diabaikan Kepala Daerah* (Observer: Arbitrary remove Public Officials, Bureaucratic Reforms Overlooked Head of Region), Korpri Online, available at <https://korpri.id/berita/2288/pengamat-sewenang-wenang-copot-asn-reformasi-birokrasi-diabaikan>

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